BLANK

PAGE

BLANK

PAGE

IN THE

Supreme Court of the United States

October Term, 1965
No. .....

PETER WYLAN,

Appellant,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

On Appeal From the Appellate Department of the Superior Court for the County of Los Angeles, State of California.

APPELLANT'S REPLY TO MOTION TO AFFIRM.

1. In the motion to affirm of appellee, no discussion is made either of the case of *Graccio v. Pennsylvania,* 34 Law Week. 4099 (1966), or of the case of *Musser v. Utah,* 333 U.S. 95 (1947). Instead, under Section III of its brief the appellee describes Penal Code Section 650½ as "a general law prohibition intended by the State legislature to cover those offenses against public decency and good morals which have not been stated directly and prohibited by being made specifically punishable in other sections of the Penal Code of California". This is exactly the type of statute which does not mea-

sure up to the requirements of the Due Process clause, as set forth in the case of *Graccio v. Pennsylvania, supra.* For in attempting to cover up the gaps that might otherwise exist in criminal legislation of California, the legislature has enacted, in Section 650½, a statute which allows conviction in the unguided discretion of arresting officers, judges and juries. In other words, the appellant here was in the same position as the appellant in the case of *Graccio v. Pennsylvania,* where the Court said, "it would be difficult if not impossible for a person to prepare a defense against such general abstract charges as 'misconduct' or 'reprehensible' conduct."

2. In Section II, appellee states that a "dental office in a regular professional building in a populated city is as much a 'public place' as a barber shop," and therefore Section 650½ of the Penal Code should be held to apply to activities within. In other words, appellee is suggesting that the use of the word "public" in the statute limits its coverage in much the same manner as this statute has been limited by judicial interpretation in the states of Oklahoma and New York. Jurisdictional Statement, page 9, footnote 16. In the state court hearings below, appellant argued that Section 650½ should be restricted in coverage by judicial interpretation and that a dental office should not be considered a public place. The court below did not consider whether a dental office was a public place. For, the appellee argued below that the statutory language of Section 650½ was so broad as to cover activities anywhere and not just in a

"public place" and therefore, there should be no such limitations. The trial court and the Appellate Department of the Superior Court both agreed with the appellee that Section 650½ of the Penal Code had language so broad as to cover activities committed anywhere and that the place of commission was irrelevant. The appellee by his own actions below has insured that Section 650½ is a statute without any judicial limitation on coverage.

Again, appellant submits that the questions presented by this appeal are substantial and should be reviewed.

Respectfully submitted,

RONALD H. BONAPARTE,
Attorney for Appellant.